



August 19, 2005

Western Washington Municipal SW Comments
Bill Moore
WA Dept. of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on Draft NPDES Phase II Stormwater Permit for Western Washington

Dear Mr. Moore,

We appreciate the considerable work that you and Ecology staff have expended to develop the above-noted draft permit, and the difficult issues the department must address to implement the Phase II program. As one of the municipalities subject to the Phase II permit, we are very concerned about the impact the permit will have on the City as an agency, and on the community.

Enclosed you will find our comments on the draft permit. I have also copies of correspondence from the Association of Washington Cities, which are referenced and incorporated into our comments. If you have any questions, please contact Josh Johnson, our Stormwater Manager, at (360) 442-5210.

Sincerely,

Jeff Cameron, PE
Public Works Director

cc: Josh Johnson, Stormwater Manager

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SPECIAL CONDITIONS

- S4.A. Language Suggestion: “All Permittees must be in compliance with applicable Total Maximum Daily Load (TMDL) requirements. Applicable TMDLs are those which have been approved by the EPA on or before the issuance date of this permit, or which have been approved by the EPA prior to the date that the Permittee’s application is received by Ecology, which ever is later.”
- S4.B. Language Suggestion: “For applicable TMDLs not listed in Appendix 3, compliance with this permit shall constitute compliance with those TMDLs. Permittees shall track and document actions required by this permit . . . [Also delete the last line].”
- S4.C. General Suggestion: Consider less specific language modeled after the Eastern WA Phase II Draft, for example: “For applicable TMDLs listed in Appendix 3, affected Permittees shall comply with the specific requirements identified in Appendix 3 to this permit. The status of the TMDL implementation must be included as part of the annual report submitted to Ecology for this Permit.”
- S5C.1.c. Formatting Suggestion: Indent this paragraph.
- S6. Longview’s comments on this section are represented in the letter presented to Jay Manning, WA DOE Director, on 8/18/2005 by the Association of Washington Cities (see the attached letter, the fact sheet, and its Attachment A). The DOE should not attempt to conduct BMP effectiveness research by requiring all permittees to perform water quality monitoring of BMPs used in the jurisdiction. That requirement will result in a tremendous duplication of effort, and a tremendous expenditure of taxpayer and ratepayer fees.
- As to the question posed by DOE, coordination and collaboration with other jurisdictions should be encouraged, but should not be permit requirement. Jurisdictions will have varying philosophies toward compliance, regulations, and establishment of fees or taxes to support the Phase II program, and it is unreasonable to force partnerships between agencies, potentially burdening some agencies with an uncooperative neighbor, and potentially exposing all agencies to liability and violations of the permit.
- S7.A. Language Suggestion: Replace the opening paragraph with “This section applies to Permittees and Co-Permittees, including all cities and counties covered under this permit.”
- S7.A.4.a. What is the purpose of collecting the financial information? DOE will not have the staff time to review this information from all of the permittees, and these efforts will drain resources from actually productive portions of the program. This does nothing to improve water quality and reduce pollutants in runoff. This information may be nice to have, but do not make it a permit requirement subject to violations.
- S7.C Language Suggestion: Replace the opening paragraph with “Each Permittee must develop and implement a thorough, multi-media public outreach program. The program should inform individuals and households about the impacts of stormwater on surface and ground waters, steps they can take to reduce stormwater pollution, and how to

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become involved locally. Outreach and educational efforts should also be targeted and presented to specific audiences for increased effectiveness.”

S7.C.1.a. Timeline Extension: Development is expected to be an ongoing process and given the broad mandate of the program, four years instead of two are requested to get it right. This is still less time deemed adequate the Eastern Washington Phase II Draft.

S7.C.1.b. Delete this minimum performance measure. It is not practicable to design a broad outreach program to reach 100% of the audience. Longview shares the spirit of this requirement, emphasizing it with the word “thorough” in the suggested language above. Efforts to reach all community members, with issues such as multi-ethnic groups, other languages, illiterate, homeless, etc., will drain resources from other efforts. Targets such as “thorough” or rates of 90% or 95% or much more realistic.

S7.C.2.b. The DOE should require only a link to the permittees web site; it should not require that all information be submitted electronically for the DOE web site. Formatting and compatibility issues between the web systems will cause expenditure of staff time and resources to convert data, with no substantial benefit to the public that cannot be provided by just a link to the agencies web site.

S7.C.3.a. General Comment: While Longview is on track to meet all requirements of this section, the city recognizes that this time table and the GIS requirement are overly burdensome for other jurisdictions.

S7.C.3.b.i. Language Suggestion: In order to more closely align with the EPA regulations, replace the second paragraph with “However, the categories of non-stormwater discharges listed below are exempt from the prohibition unless otherwise identified as a significant contributor of pollution to the regulated small MS4. Such a determination will require the Permittee to incorporate appropriate control measures into its SWMP. These categories of non-stormwater discharges include:

- Non-stormwater discharges covered by an NPDES permit
- Flows from riparian habitats and wetlands, diverted stream flows (provided all necessary permits or authorizations are secured in advance)
- Rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, springs,
- Potable water sources, water line flushing (except if previously hyperchlorinated)
- Irrigation water, including lawn watering and landscape irrigation (conservation programs should be in place).
- Water from crawl space pumps, footing drains, foundation drains, air conditioning condensation
- Individual residential car washing
- Dechlorinated swimming pool discharges (except if previously hyperchlorinated, pool cleaning waste water and filter backwashes may not be discharged to stormwater)
- Street wash water (at active construction sites, streets must have been swept first)
- Discharges or flows from fire fighting activities (except training exercises)

For many of these categories, discharge into a sanitary sewer is preferred. Other measures may apply (such as dechlorination, pH adjustment, re-oxygenation, velocity and volumetric controls to prevent re-suspension of sediment).”

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S7.C.3.b.i. Language Suggestion: In the above passage, note the addition of “individual residential car-washing” and “discharges or flows from fire fighting activities.” Also some of the categories were combined and comments were reordered to enhance clarity.

S7.C.3.c. Language Suggestion: Replace the last sentence of the opening paragraph and sub-points i through iv with the following: “The following procedures shall be developed within four years of the effective date of the permit, unless otherwise noted.

- i. Locating priority areas likely to have illicit discharges, including at a minimum: evaluating land uses and associated business/industrial activities present; areas where complaints have been registered in the past; and areas with storage of large quantities of materials that could result in spills.
- ii. Field assessment activities, including visual inspection of priority outfalls identified in (i) above during dry weather and for the purposes of verifying outfall locations, identifying previously unknown outfalls, and detecting illicit discharges.
- iii. Illicit discharge response, including procedures to:
 - a. Investigate promptly, typically within 30-days.
 - b. Characterize the nature of and potential public or environmental threat posed by the known or suspected illicit discharge. Procedures shall detail how to ascertain its urgency and how to implement containment.
 - c. Trace the source of an illicit discharge; including visual inspections, and when necessary, opening manholes, using mobile cameras, collecting and analyzing water samples, and/or other detailed inspection procedures.
 - d. Remove the source of the discharge, including notification of appropriate authorities; notification of the property owner; technical assistance for eliminating the discharge; follow-up inspections; terminating the connection; and escalating enforcement and legal actions if the discharge is not corrected.
- iv. Spill response, including procedures developed within two years from the effective date of the permit to:
 - a. Respond or refer as soon as possible to characterize the spill and its impact on public health and the environment
 - b. Notify agencies as may be required by law, control/contain, and cleanup, and
 - c. Follow-up afterwards as necessary.”

Due to the scope of this part and the desire for the future Stormwater Advisory Board to be involved, at least four years are requested to meet this requirement, except of spill response which still must be completed in two years.

Use of the *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, is fine reference, but inappropriate as a rule. The proposed language above captures its spirit of without firmly holding jurisdictions to all its rigors.

Note the elimination of bulleted language concerning the deadlines for investigation initiation and termination of connection. The proposed language addresses these points in more detail while emphasizing their potential urgency. Longview does not support inspecting and enforcing other NPDES permits on behalf of Ecology. Local area prioritization and field screening activities should not replace Ecology inspections. The status quo of the city receiving copies of and occasionally observing Ecology NPDES inspections is appropriate and useful.

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Similarly, the 24-hour and 7-day deadlines for spill response were dropped in favor of a strong emphasis on urgency because the difference between them was judgmental and local spill response procedures have adopted higher standards anyway.

- S7.C.3.d. Language Suggestion: “Inform public employees, businesses, and the general public of the hazards associated with illegal discharges and improper disposal of waste.
- a. Public outreach and business education activities pursuant to S7.C(1) are required.
 - b. All municipal field staff, which as part of their normal job responsibilities, might come into contact with or otherwise observe an illicit discharge or illicit connection to the storm sewer system shall be trained on the identification of an illicit discharge/connection and on the proper procedures for reporting it. Initial training shall be completed no later than two years from the effective date of this permit, and on an annual basis thereafter.”

Note that language requiring outreach to the general public and businesses was reiterated in this section. Original sub-point i was eliminated as it was very similar to sub-point ii. The latter’s target audience was smaller and its deadline was earlier. For many jurisdictions, any difference between these two audiences will be minor and the two-year benchmark more closely matches relevant program development benchmarks.

- S7.C.4. Language Suggestion: Taken together, the second and third sentences are confusing. Do they say the same thing? The second sentence is repeated four more times throughout this subsection. Statement once here is adequate.
- S7.C.4.a. Timeline extension. For practical planning reasons, please allow parity with the Eastern Washington permit and provide two years from the effective date of the permit to complete the ordinance. Modifying Longview’s existing ordinance will be a good exercise for the yet-to-be-formed Stormwater Advisory Board.
- S7.C.4.a.i. Language Suggestion: Begin the second sentence with, “Other requirements may be used or these requirements may be tailored to local . . .”
- S7.C.4.b. Timeline Extension: As the inspection process must be developed, budgeted, and staffed, please allow parity with the Eastern Washington permit and provide four years from the effective date of the permit to complete the ordinance.
- S7.C.4.b.iii & iv. Language Suggestion: As they state the obvious, consider deleting “Enforce as necessary based on inspection,” and “This inspection may be combined . . .”
- S7.C.4.c.ii – iv. Language Suggestion: This is probably outside the scope of the ordinance and should be in a separate subsection, similar to S7.C.b. Should a timeline be given to the inspection provision, City requests four years to meet compliance in order to develop, budget, and staff for this new capacity.
- S7.C.5.d. Delete this minimum requirement. Even a smaller city like Longview has several thousand catch basins. Many catch basins will be visited as part of the mapping project and illicit discharge detection initiatives. Visiting all catch basins is not a high value exercise by itself, and limited resources need to be focused on program development.
- S9.B.3. Expenditures broken down by SWMP component are not indicative of the effectiveness of the program or compliance with the permit. This information is not

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relevant to DOE's mission for Phase II compliance, and this requirement adds an undue burden on the permittee to perform additional accounting and analysis of its expenditures. Again, these types of requirements drain resources from activities that will truly affect water quality.

S9.B.8. Please consider adding a mention of any TMDL related attachments required by Section S4.

DEFINITIONS

Integrated Pest Management Program – S7.C(5)(g) calls for this. As currently defined, it is a rigid 24-element program. Please revise the second sentence of this definition to read: "Elements common to integrated pest management include:"

OTHER COMMENTS

1. Please accept as formal comments from the City of Longview the concerns outlined by the Association of Washington Cities and Association of Washington State Counties in the attached letter sent to Mr. Jay Manning, WA Ecology Director, the week of July 18th, 2005.
2. Coordination with other jurisdictions should be encouraged but not written as a permit requirement.
3. The DOE should not delegate their obligations onto permittees, for example, identifying facilities and businesses in the jurisdiction that potentially require an industrial stormwater permit. That should not be a part of this program.
4. A compliance matrix or conditions-and-deadlines summary would be nice, as would including contact and mailing information near the Annual Report instructions.
5. As jurisdictions are required to develop several programs, literature, videos, training applications, and forms, the city requests that in a good faith effort to minimize duplication of efforts statewide, examples of these items are posted on the DOE website. Ideally, it would be desirable that a development coordinator be assigned during the first permit cycle to help coordinate to flow of emerging information and provide assistance.
6. The current proposal in the permit to require new developments to use the DOE Western WA Stormwater Management Manual (or equivalent) within a short period of time after adoption ignores state vesting laws and exposes permittees to liability.
7. The City appreciates the DOE Manual and understands that conforming to its standards generally constitutes compliance with water quality standards. Still, Longview has identified questions and concerns with this Manual, and wants to express its apprehension over the adoption of this manual through Appendix 1 of the Permit and other conditions in the Permit requiring adoption of the Manual or an equivalent document. The Manual was developed outside of the required rule making process, and DOE continually stressed that the manual was guidance only.

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8. When would the permit conditions become applicable to areas newly annexed into the jurisdiction, and the existing drainage systems serving those annexed area? The SWMP update requirement includes identification of annexed areas, which implies that the Permit applies immediately to those areas. Immediate compliance in annexed areas is not feasible. We suggest that the same timeframes identified in the initial permit be applicable for areas annexed into the jurisdiction, regardless of when during the permit duration the annexation occurs. Agencies will need time to map newly acquired systems, develop the databases and methods to include those new residents and businesses in the outreach and education programs, and other aspects of the permit.
9. The number and types of submittals include much information that has no bearing on improving water quality and compliance with the Clean Water Act. Much of that information seems to be required because DOE thinks it would be nice to have, but it drains permittee staff time and resources tracking and preparing that information for submittal, and it's inappropriate to include it as a permit condition subject to the violations and penalties of the Clean Water Act. Additionally, DOE will be inundated with reports from permittees and apparently will not have the staff to review the information.
10. The differences between the Western Washington and Eastern Washington Phase II permits are indefensible. The more lenient Eastern Washington permit creates an economic and regulatory disparity between the east and west portions of the state, and cannot be justified by the climatic differences between the regions. Allowing eastern permittees more time to complete the same tasks as western permittees is not reasonable.

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APPENDIX 1 – MINIMUM TECHNICAL REQUIREMENTS

GENERAL

1. This section's formatting hinders its ease of use. Please consider:
 - a. Creating a table of contents.
 - b. Adopting an outlined structure so that this document can be readily cited.
 - c. Narrow that over-wide left margin/indentation.

EXEMPTIONS

- A. Road Maintenance. Please replace the first sentence of this section with "The following road maintenance practices are exempt: vegetation maintenance, reshaping/regrading drainage systems, shoulder grading, pothole and square cut patching, crack sealing, and overlaying or resurfacing with an in-kind material without expanding the area of coverage (such as the chip sealing (e.g. Bituminous Surface Treatment, or BST) of asphalt or concrete surfaces)."

Adding "chip seal" to this part may seem picky; but as a common maintenance practice here, it is important to the City. Note that the term "prism" was replaced with "area of coverage." If the Department chooses to keep the term "prism," then please define it.
- B. Road Maintenance. Please replace the second sentence of this section with "A preservation or maintenance project is defined as preserving/protecting infrastructure by rehabilitating or replacing existing structures to maintain operational and structural integrity, and for the safe and efficient operation of the facility. Maintenance projects do not increase the traffic capacity of the roadway or parking area or expand the surface area of impervious surfaces. The practices described below are subject to Minimum Requirements #1 - #5; However, in most cases, only Minimum Requirement #2, Construction Stormwater Pollution Prevention, will be germane. Where appropriate, project proponents are encouraged to look for opportunities to use permeable and porous pavements."
 - Removing and replacing a paved surface to base course or lower or repairing the roadway base or subgrade.
 - Overlaying existing gravel with BST, asphalt, or concrete, provided that the following conditions are met:
 - i. For roads – The traffic surface will be subject to an average daily traffic (ADT) volume of <7,500 on an urban road or an ADT volume of <15,000 vehicles on a rural road, freeway, or limited access control highway.
 - ii. For parking areas – The traffic surface will be subject to <40 trip ends per 1,000 square feet of building area or 100 total trip endsIf these thresholds are exceeded, then the project is considered Redevelopment and subject to the Minimum Requirements that are triggered when the thresholds identified for redevelopment are met.
- C. Road Maintenance. The remaining two sentences in this section may be deleted. Proposed language in A & B above is both practical and are equitable to Eastern WA's Draft Phase II.
- D. Safety Improvement Projects: Please add the following exemption: "**Safety Improvement Projects**: Projects to improve motorized and/or non-motorized user safety that do not enhance the traffic capacity of a roadway are subject only to Minimum Requirements #1 - #5. Certain safety improvement projects such as sidewalks, bike lanes, bus pullouts and other transit improvements must be evaluated on a case-by-case basis."